

B.R., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Philadelphia, PA, Employer**

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**Docket No. 11-862
Issued: November 22, 2011**

Case Submitted on the Record

Before:
 RICHARD J. DASCHBACH, Chief Judge
 COLLEEN DUFFY KIKO, Judge
 JAMES A. HAYNES, Alternate Judge

On February 24, 2011 appellant filed a timely appeal from a December 1, 2010 schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award decision.

The issue is whether appellant has more than seven percent left upper extremity impairment for which he received a schedule award.

On appeal, appellant's attorney asserts that the weight of the medical evidence rests with the opinion of the attending physician or, at the very least, a conflict in medical evidence has been created between the opinions of the attending physician and OWCP's medical adviser.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On February 2, 2002 appellant, then a 36-year-old housekeeping aide, filed a traumatic injury claim alleging that he injured his left wrist moving a desk. On April 24, 2002 OWCP accepted the claim for neuritis of the dorsal ulnar sensory nerve of the left wrist and an authorized left wrist arthroscopy was performed on May 13, 2002 for repair of a triangular fibrocartilage complex (TFCC) tear. Appellant returned to modified duty on July 29, 2002.²

On March 23, 2010 appellant, through his attorney, requested a schedule award and submitted a December 8, 2009 report in which Dr. David Weiss, an osteopath, reported that physical examination demonstrated decreased range of motion of palmar flexion and ulnar deviation of the wrist and no tenderness over the radiocarpal articulation, the TFCC or the distal radio-ulnar joint. Watson shift, ulnar abutment, TFCC load and TFCC provocative tests were negative. Dr. Weiss advised that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),³ appellant had a class 1 impairment for a TFCC tear which, under Table 15-3, yielded a default value of eight percent. He applied the grade modifiers, finding a grade modifier of 1 for Functional History (GMFH), a grade modifier of 2 for Physical Examination (GMPE) and no modifier for Clinical Studies (GMCS). Dr. Weiss then applied the applied the net adjustment formula and concluded that appellant had a total nine percent impairment of the left upper extremity.⁴ On April 19, 2010 appellant submitted a schedule award claim.

In an April 28, 2010 report, Dr. Morley Slutsky, an OWCP medical adviser Board-certified in occupational medicine, noted his review of the statement of accepted facts and medical record, including Dr. Weiss' report. He advised that the most impairing left wrist diagnosis was TFCC tear, and agreed that this constituted a class 1 impairment. OWCP's medical adviser also agreed with Dr. Weiss' assessment that of a grade modifier of 1 for GMFH but disagreed with his finding of a grade modifier of 2 for GMPE. He stated that Dr. Weiss' finding was not consistent with the requirements of section 15.7 of the A.M.A., *Guides* because he documented only one motion per joint movement and, as such, the measurements relied upon by Dr. Weiss were not valid for impairment rating purposes. OWCP's medical adviser reported that Dr. Weiss found no other objective findings, noting his report of no tenderness to the wrist on physical examination. Dr. Slutsky advised that maximum medical improvement was reached on December 8, 2009, applied the net adjustment formula, and concluded that appellant had a seven percent left upper extremity impairment.

On May 10, 2010 appellant was granted a schedule award for a seven percent left upper extremity impairment, for a total of 21.84 weeks, to run from December 8, 2009 to May 9, 2010. On May 14, 2010 his attorney requested a hearing that we held by video teleconference on September 8, 2010. Appellant testified that he continued to work light duty and described the

² Appellant has two additional accepted employment injuries, a left wrist sprain adjudicated under File No. xxxxxx485 and a left knee injury adjudicated under File No. xxxxxx882.

³ A.M.A., *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008).

⁴ Dr. Weiss also provided an impairment rating for appellant's left lower extremity, not at issue in this case. *Supra* note 2.

condition of his left wrist. His attorney argued that Dr. Weiss' opinion constituted the weight of the medical evidence or, that at the least, a conflict in medical evidence had been created.

In a December 1, 2010 decision, OWCP's hearing representative affirmed the May 10, 2010 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing federal regulations⁶ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸ For decisions issued after May 1, 2009, the sixth edition will be used.⁹

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).¹⁰ Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.¹¹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹²

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to its medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.¹³

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁹ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹⁰ A.M.A., *Guides*, *supra* note 3 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

¹¹ *Id.* at 385-419.

¹² *Id.* at 411.

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

ANALYSIS

The Board finds that appellant has no more than a seven percent permanent impairment of the left upper extremity. Dr. Weiss, an attending physician and Dr. Slutsky, an OWCP medical adviser, agreed that, under Table 15-3, Wrist Regional Grid, appellant had a class 1 left upper extremity impairment due to a TFCC tear. They also agreed that the grade modifiers to be used for GMFH was 1 and that a grade modifier was not applicable for GMCS. Dr. Weiss, however, differed in their assessment of the grade modifier to be used for physical examination. He advised that appellant had a modifier for physical examination of two, stating that this was based on “observed and palpatory.” Dr. Weiss also indicated that an objective factor for his impairment evaluation was decreased range of motion of palmar flexion and ulnar deviation. However, as explained by Dr. Slutsky, section 15.7a of the A.M.A., *Guides* provides that, after a warm-up, the rating physician must perform three measurements per joint motion, that the measurements are then averaged, and that each of the three measurements should be within 10 degrees of the calculated average.¹⁴ There is no indication in his December 8, 2009 report that Dr. Weiss followed these requirements. Dr. Slutsky’s opinion is therefore of diminished probative value in this regard and is not sufficient to establish a conflict in medical evidence.

The Board finds that OWCP’s medical adviser properly utilized Table 15-3, Wrist Regional Grid, identified the proper grade modifiers and applied the net adjustment formula, in reaching his conclusion that appellant had a seven percent left upper extremity impairment.

There is no other medical evidence of record addressing the extent of appellant’s permanent impairment under the appropriate edition of the A.M.A., *Guides*, which supports any greater impairment.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has no more than a seven percent permanent impairment of the left upper extremity.

¹⁴ A.M.A., *Guides supra* note 3 at 464.

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board